

Attorney's Docket No. 033339/206076

PATENT

#16

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Benbadis et al.

Appl. No.: 09/700,687

Filed: February 14, 2001

For: MUTANT LACTOBACILLUS BULGARICUS

STRAINS FREE FROM BETA-GALACTOSIDE ACTIVITY

Confirmation No. 8151

Group Art Unit: 1651

Examiner: Ruth A. Davis

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. 1.181 TO WITHDRAW HOLDING OF ABANDONMENT  
IN ACCORDANCE WITH MPEP §711.03(C) AND 1156 O.G. 53

Sir:

As set forth in MPEP § 711.03(c) and 1156 O.G. 53, Applicants hereby petition to have the holding of abandonment of the above-identified application withdrawn. The application was held to be abandoned for failure to respond to an Office Action mailed April 22, 2003. The following materials are submitted in support of Applicants' petition:

1. A copy of the Amendment and the Petition and Fee for Extension of Time that were duly filed by First Class Mail on August 18, 2003. These papers included a Certificate of Mailing confirming that they were mailed on August 18, 2003.

2. A copy of our return postcard from the United States Patent and Trademark Office showing that the Patent Office received the aforementioned Amendment and Extension of Time on August 20, 2003.

In view of the foregoing remarks and the enclosed evidence indicating that the Amendment was timely filed with the United States Patent and Trademark Office, Applicants respectfully request that the holding of abandonment of this application be withdrawn.

It is believed that the present petition is treated as a petition under 37 C.F.R. 1.181, and that no fee is applicable. However, if any fee is due, please charge the fee to our deposit account No. 16-0605.

Respectfully submitted,

Raymond Q. Linker, Jr.

Registration No. 26,419

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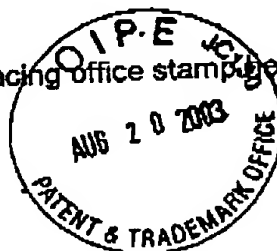
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Date Mailed: August 18, 2003  
Atty. Dkt. No. 033339/206076

Application No. 09/700,687; Filing Date February 14, 2001  
Inventor(s): Benbadis et al.; Title of Invention: MUTANT  
LACTOBACILLUS BULGARICUS STRAINS FREE FROM BETA-  
GALACTOSIDE ACTIVITY

Documents Enclosed: **Amendment and Extension of Time w/\$110**  
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PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/700,687 Confirmation No.: 8151  
Applicant(s): Laurent Benbadis et al.  
Filed: February 14, 2001  
Art Unit: 1651  
Examiner: Ruth A. Davis  
Title: MUTANT LACTOBACILLUS BULGARICUS STRAINS FREE FROM  
BETA-GALACTOSIDE ACTIVITY

Docket No.: 033339/206076  
Customer No.: 00826

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

## PETITION AND FEE FOR EXTENSION OF TIME 37 C.F.R. § 1.136(a)

1. This is a petition for an extension of time for a total period of 1 months to respond to the Office Action dated April 22, 2003.

2. Applicant is ☐ a small entity; ☒ other than a small entity.

3. Calculation of extension fee (37 C.F.R. § 1.17(a)(1)-(a)(5)):

Total Months Requested	Fee For Other Than Small Entity	Fee for Small Entity
<input checked="" type="checkbox"/> one month	\$110.00	\$55.00
<input type="checkbox"/> two months	\$410.00	\$205.00
<input type="checkbox"/> three months	\$930.00	\$465.00
<input type="checkbox"/> four months	\$1,450.00	\$725.00
<input type="checkbox"/> five months*	\$1,970.00	\$985.00

\*Cannot be used to exceed six-month statutory limit for response to an Official Action.

☒ A check in the amount of \$110.00 is enclosed.

☐ Charge Deposit Account No. 16-0605 for the extension fee.

☒ Charge Deposit Account No. 16-0605 for any fee deficiency.

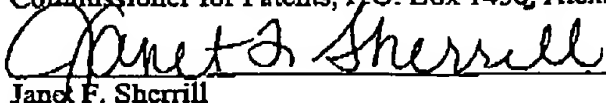
Respectfully submitted,

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Janet F. Sherrill

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Examiner Ruth A. Davis

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Application No. 09/700,687

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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Appl. No.: 09/700,687  
Applicant(s): Laurent Benbadis et al.  
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Customer No.: 00826

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P.O. Box 1450  
Alexandria, VA 22313-1450

**AMENDMENT**  
37 C.F.R. § 1.121

Sir:

In response to the Office Action dated April 22, 2003, please amend the above-identified application as follows:

**Amendments to the Claims** are reflected in the listing of claims beginning on page 2 of this paper.

**Remarks/Arguments** begin on page 4 of this paper.

In re: Laurent Benbadis et al.  
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Filed: February 14, 2001  
Page 2

Amendments to the Claims:

1. (Previously Amended) A mutant strain of *L. bulgaricus* lacking  $\beta$ -galactosidase activity which carries a non-sense mutation in at least one of the coding sequences of the lactose operon.
2. (Previously Amended) The mutant strain of *L. bulgaricus* as claimed in claim 1, wherein said coding sequence is the sequence encoding  $\beta$ -galactosidase.
3. (Currently Amended) ~~The A mutant strain of *L. bulgaricus* as claimed in claim 1,~~ which was deposited on January 14, 1998 with the CNCM under the number I-1968, said strain lacking  $\beta$ -galactosidase activity and carrying a non-sense mutation in at least one of the coding sequences of the lactose operon.
4. (Previously Amended) A lactic ferment, which comprises at least one strain of *L. bulgaricus* as claimed in claim 1.
5. (Previously Amended) The lactic ferment as claimed in claim 4, wherein said strain of *L. bulgaricus* is combined with at least one strain of *S. thermophilus*.
6. (Previously Amended) A method for preparing a fermented dairy product, which comprises a step during which milk is fermented using a lactic ferment comprising at least one strain of *L. bulgaricus* as claimed in claim 1, in the presence of at least one sugar which can be assimilated by said strain.
7. (Previously Amended) The method as claimed in claim 6, wherein said sugar which can be assimilated is glucose.
8. (Previously Amended) The method as claimed in claim 6, wherein the arrest of fermentation is carried out without cooling of said dairy product.
9. (Previously Amended) A fermented dairy product obtained using a method as claimed in claim 6.

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10. (Previously Amended) The fermented dairy product as claimed in claim 9, wherein said product is a yogurt.
11. (Currently Amended) The A mutant strain of *L. bulgaricus* deposited on January 14, 1998 with the CNCM under the number I-1968.
12. (Currently Amended) A lactic ferment comprising which comprises at least one strain of *L. bulgaricus* as claimed in claim 11.
13. (Previously Added) The lactic ferment as claimed in claim 12, wherein said strain of *L. bulgaricus* is combined with at least one strain of *S. thermophilus*.
14. (Currently Amended) A method for preparing a fermented dairy product, which comprises ~~[[s]]~~ a step during which wherein milk is fermented using a lactic ferment comprising at least one strain of *L. bulgaricus* as claimed in claim 11, in the presence of at least one sugar which can be assimilated by said strain.
15. (Previously Added) The method as claimed in claim 14, wherein said sugar which can be assimilated is glucose.
16. (Previously Added) The method as claimed in claim 14, wherein the arrest of fermentation is carried out without cooling of said dairy product.
17. (Currently Amended) A fermented dairy product obtained using ~~a by the~~ method as claimed in claim 14.
18. (Previously Added) The fermented dairy product as claimed in Claim 17 wherein said product is a yogurt.



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### REMARKS

Applicant acknowledges the Examiner's indication of allowable subject matter for Claims 3 and 11-18, subject to a correction of some minor informalities.

By this response, Claim 3 has been rewritten into independent form and should now be in condition for immediate allowance. Likewise, Claims 11, 12, 14 and 17 have been amended to adopt the suggestions made by the Examiner. Accordingly, it is submitted that these claims are also now in condition for immediate allowance.

Applicant requests reconsideration by the Examiner of the obviousness rejection with respect to Claims 1-2 and 4-10. Contrary to the assertions made by the Examiner, it would not have been obvious to provide a mutant strain of *L. bulgaricus*, which carries a non-sense mutation in at least of one of the coding sequences of the lactose operon. This is neither taught nor remotely suggested by the Hottinger reference nor by the secondary reference to Mainzer. As noted in previous remarks, Hottinger et al. disclose mutant strains of *L. bulgaricus* having a deletion in the gene encoding  $\beta$ -galactosidase. On the contrary, the mutant strain of the present invention has no deletion of the gene encoding  $\beta$ -galactosidase, but only a non-sense mutation. Thus, they are clearly structurally different from the mutants of Hottinger et al. Since neither Hottinger nor the secondary reference provides any suggestion or motivation or making the particular mutation, there is no proper basis for rejecting the claims as obvious.

The Examiner's attention is directed to the detailed arguments set forth in the response dated October 15, 2001. For sake of conciseness, these remarks will not repeated here but the reasons given this prior response clearly demonstrate that the rejection is improper and should be withdrawn.

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Accordingly, reconsideration by the Examiner and formal notification of the allowability of all claims as now presented are earnestly solicited.

Respectfully submitted,

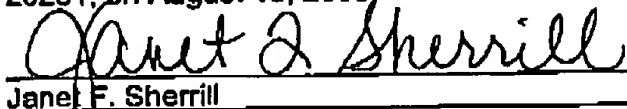


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Janet F. Sherrill